MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.322 OF 2000

Jeetnarayan Ramnaresh Pandey Petitioner
versus
The MCGB and five others Respondents

Mr.Shrishail Sakhare for petitioner.
Mr.A.Y.Sakhare, Sr.Counsel with Mr.Bhor h/for M.D.Patil for respondents 1 to 5.
Mr.A.R.Patil, AGP for respondent no.6.

CORAM : A.S.OKA, J.

DATE : 20th April 2007

JUDGMENT :-

1. Heard learned counsel appearing for the parties. By this petition the petitioner has alleged that the contemnors have committed wilful and deliberate breach of order dated 2nd August 2000 passed in Appeal from Order No.500 of 2000. By the said order passed by this Court, the structure of the petitioner was protected. The said appeal was filed by the petitioner in this Court for challenging refusal of ad-interim injunction by the City Civil Court, Mumbai. This Court disposed of the appeal by granting an ad-interim injunction in terms of prayer clause

(a) of the draft Notice of Motion. This Court directed that the Notice of Motion shall be decided on merits. As of today, it is an admitted position that the Notice of Motion and the suit are pending.

2. The advocate appearing for the petitioner by his letter dated 3rd August 2000 addressed to the Ward Officer of the "P" North Ward of the first respondent communicated the said order passed by this Court. The structure was admittedly demolished on 5th August 2000.

3. The learned counsel appearing for the petitioner has invited my attention to various averments made in the petition. He submitted that when the order dated 2nd August 2000 was passed by this Court, the first respondent was represented by its advocate and even an officer of the first respondent was present. He pointed out that though the officers of the first respondent and in particular third respondent were aware of the order, the contemnors including the third respondent flouted the order deliberately and demolished the suit structure. He invited my attention to various affidavits filed by the contemnors. He pointed out that the

main allegation of breach is against the third respondent who was instrumental in demolishing the structure.

4. The learned counsel appearing for the contemnors nos.1 to 5 has invited my attention to the affidavit of Shri Sanjay Sawant, the third respondent. He invited my attention to the averments made in second and third paragraphs of the said affidavit and pointed out that on 5th August 2000, there was a mass demolition of 141 huts including the structure of the petitioner. He invited my attention to paragraph no.7 of the said affidavit in which an apology has been tendered. He submitted that the contemnors have no objection if the petitioner reconstructs the structure in its original form subject to further order which may be passed in the Notice of Motion and the suit. He submitted that the cost of reconstruction will have to be borne by the petitioner.

5. I have considered the submissions. A perusal of the order dated 18th August 2001 passed by this Court shows that the notice has been issued to all the contemnors. So far as sixth respondent is concerned, there is an

affidavit-of-reply filed by him. At the relevant time he was attached to Dindoshi Police Station, Malad as an Assistant Inspector of Police. He stated that on the request made by the first respondent, the Police Officers and Constables remained present for maintaining law and order situation at the time of demolition of the unauthorised structures. He has denied that he was made aware of any order of this Court. Insofar as sixth respondent is concerned, he remained present at the site of the demolition for giving protection to the demolition squad and for maintaining law and order. There was no injunction granted against sixth respondent. Moreover, at the same time, more than 140 structures were demolished by the demolition squad. Therefore, by no stretch of imagination it can be said that sixth respondent has committed any breach of the order passed by this Court.

6. It will be necessary to refer to the affidavit of the third respondent filed on 22nd March 2007. In paragraph no. 3 of his affidavit the third respondent has stated thus:-

3) I say that the intimation of passing the injunction order dtd.2.8.2000 in Appeal from Order No.500 of 2000 is very vaguely drafted which is exhibited at Exhibit B to the Contempt Petition. The said letter is addressed to Ward Officer P/N Ward, Mamlatdarwadi, Liberty Garden, Malad (W), Mumbai 400 057. The suit premises is situated at Sanjay Nagar, Pimpripada Road, Goregaon Mulund Link Road, Malad (E). This area comes under the supervision and control of Asstt. Engineer B&F East Section of P/North Ward. Nowhere in the letter dtd.3.8.2000, the address of the suit premises is mentioned. The contents of the letter only says that "This is to inform you that the above matter appeared before His Lordship Justice Shri Mhase on 2.8.2000 and Hon'ble Court after hearing the counsel for both the parties pleased to dispose the above A.O. and grant ad-interim order in terms of prayer (a) of the above Notice of Motion restraining Respondents abovementioned from demolishing the suit structure pending the hearing of the above Notice of Motion." From the pure readings of the contents of the said letter, none can make out the exact location of the location and where the suit premises was situated. Moreover, the said letter has been dispatched through the dispatch section, Ward Officer P/N Ward, Malad (W) and the said letter was marked to Asstt. Engineer B & F having charge of West Zone of P/N Ward in absence of detail address of the suit premises. However, the said letter ought to have been marked to the Asstt. Engineer B & F section looking after the East Zone of P/N ward with the correct address and location of the suit premises would have been mentioned. It is the deliberate act on behalf of the Petitioner in order to mislead the officers of the Respondents No.1."

7. The explanation given in paragraph no.3 by the third respondent is far from being

satisfactory. He has come out with an excuse that clear description of the suit structure in respect of which injunction was granted was not mentioned in the letter dated 3rd August 2000. A perusal of the said letter shows that the suit number, name of the appellant and appeal number were incorporated in the said letter. In my view, such a stand could not have been taken up by the concerned contemnors especially when the first respondent was represented by an advocate when order dated 2nd August 2000 was passed by this Court.

8. It is, however, noted that on 5th August 2000 the first respondent had undertaken mass demolition of 141 structures. During the course of this mass demolition, the suit structure has been demolished. It is tried to be submitted in the affidavit that the structure was unauthorised. However, this Court is not concerned with the legality of the structure in this petition.

9. The first to fifth respondents have come out with a suggestion that the petitioner can reconstruct the structure at his own cost which will be subject to the final outcome of the

Notice of Motion. It must be stated here that no adjudication has been made as of today as to whether the suit structure was an unauthorised structure. The contention of the learned counsel for the petitioner is that the structure has to be reconstructed at the costs of the contemnors. However, such a direction cannot be given in this contempt petition. The statement made by the counsel for the first to fifth contemnors which is referred to above deserves to be accepted. The learned senior counsel appearing for the first to fifth respondents has reiterated that the said respondents are tendering unconditional apology. A statement to that effect has been made in paragraph no.7 of the affidavit of the third contemnor. In my view, considering the suggestion made by the learned counsel appearing for the contemnors and considering the fact that the structure was demolished during the course of mass demolition of more than 140 structures, the apology tendered on behalf of first to fifth respondents deserves to be accepted. Moreover, the petitioner will be entitled to reconstruct the structure which will be subject to the outcome of the pending Notice of Motion.

10. Hence, I pass following order :-

(a) No case is made out for taking an action under the Contempt of Courts Act, 1971 against sixth respondent. Hence, notice issued to the sixth respondent is discharged;

(b) Apology tendered on behalf of first to fifth contemnors is accepted;

(c) In view of the statement made by the learned counsel for first to fifth respondents, it will be open for the petitioner to reconstruct the structure in the same form in which it existed on 5th August 2000 at the time of its demolition. He will re-erect the structure at his own cost without claiming any equity. It is made clear that the existence of the reconstructed structure will be subject to the further orders which may be passed in the pending Notice of Motion;

(d) The pending Notice of Motion is expedited and the same shall be disposed of before end of June 2007;

(e) The Notice of Motion will be disposed of without being influenced by the order passed in this contempt petition and it is made clear that

no adjudication has been made as regards legality and authorisation of the structure;

(f) The reconstruction shall be done by the petitioner after giving seven days advance notice to the Ward Officer of "P" North Ward of the first respondent. The Ward Officer will depute appropriate officer (who is not one of the contemnors) to the site of the said structure at the time of carrying out of the construction. The work of reconstruction shall be carried out only in presence of representative of the first respondent as aforesaid;

(g) In view of the acceptance of the apology, no further action is necessary against the contemnors. Notice is discharged. Contempt Petition is disposed of in the above terms;

(h) Civil Application No.169 of 2006 does not survive and stands dismissed as such.

(A.S.OKA, J.)